

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5844 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRAVINSINH KANUBHA GOHIL

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR KK SHAH for Respondent.

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 23/10/97

ORAL JUDGEMENT

Heard Mrs. Bhatt for the petitioner and Mr. Shah for the respondent. Rule had been issued on this matter on 8/8/1997 granting a stay on back wages at the same time. The respondent was working as Bus Conductor. He had put in three years of service; when on 15/10/1992 in checking, it was found that 33 passengers were without tickets though money was collected. The defence of the workman was that he was not well and within a distance of

one Kilometer of starting of the bus, this checking has taken place. Departmental Officer found the employee guilty. On making reference, the Labour Court reversed that order.

2. The Labour Court gave finding that the misconduct is not proved for the reasons that the employee's defence deserved to be accepted. Mr. Shah appearing for the respondent workman submitted that the award should be maintained, whereas Mrs. Bhatt for the petitioner submitted that finding in the inquiry was correct and it should not have been interfered.

3. I have gone through the award. In the facts and circumstances of the case, in my view, one can not find fault with the award of the learned Judge, wherein the learned Judge has held that the misconduct was not proved. In view of the judgment of the Hon'ble Supreme Court in the case of Workmen of Fire Stones Vs. Management, reported in AIR 1973 SC 1227, the Labour Court does have power to reappraise the departmental evidence. The discussion in Para 7 of the award indicates that the learned Judge has applied his mind and come to that conclusion.

4. Having said this, the question still remains as to whether the back wages should be awarded. From the award, there does not appear to be any discussion on as to whether the workman was employed or otherwise in the meanwhile. Besides, there are 10 former defaults in his service record. He was dismissed on 13/1/1993. The award is given on 27/1/1996. In my view, it will be just and proper that the award be interfered to the extent, the backwages are awarded.

5. In the circumstances, the following order is passed :-

The petition is partly allowed. Rule is made absolute to the extent that the Backwages are awarded. That part of the award is set aside. The part of the award granting reinstatement with continuity of service is confirmed. The workman will however be entitled to the wages from the date of the award which is dated 27/11/1996. On 8/8/1997 when Rule was issued, no stay on reinstatement has been granted. The petitioner has still not reinstated the workman. The petitioner will reinstate the workman by 31st October, 1997 and will release all the arrears by the end of November, 1997. There will be no order as to costs.

(ccs)